

EXHIBIT #3

James Atnip Deposition

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1 believe so.

2 Q As you were approaching him, was he
3 standing still? Take that back.

4 As you saw him walking out of the
5 room, describe what you see him do until the
6 time he stops.

7 A As I am approaching, he came out of
8 the room, he is talking to Officer Pickens,
9 walks from one side of the hallway to the other.
10 And Pickens turns as he is coming around him and
11 Pickens is talking to him; and he is telling
12 Pickens they are trying to poison him and trying
13 to kill him.

14 Pickens tells him, "No one is
15 trying to kill you. You need to let them help
16 you."

17 At this point we are walking past
18 the medical staff and other people are standing
19 in the hallway. And then I heard someone say --
20 I believe it was a female voice that I heard
21 say, "If he leaves here in his condition, he
22 will die."

23 At this point I don't engage in any
24 conversation with him. I stop probably five to
25 ten feet from Leija and Officer Pickens while

1 Pickens is talking to him, trying to calm him
2 down.

3 Q What happened next?

4 A Leiya seemed to be more agitated
5 and at that point, began to move his arms
6 around.

7 Q In what way?

8 A In hand gestures talking.

9 And then he asked Officer Pickens
10 if he wanted to fight. Officer Pickens told him
11 no one wanted to fight or hurt him, they just
12 wanted to help him.

13 Q Mr. Leiya walked out of his room
14 and was walking down the hall when you got
15 there, and then he stopped?

16 A Yes.

17 Q Why did he stop?

18 A He stopped and started talking to
19 Officer Pickens.

20 Q Do you know why he did that?

21 A I have no idea why he stopped.

22 Q Then what happened?

23 A He continued to ask Officer Pickens
24 if he wanted to fight. And Officer Pickens
25 assured him no one wanted to fight with him or

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1 hurt him.

2 He continued saying that they were
3 lying to him, trying to poison him, and kill
4 him.

5 He asked Officer Pickens again if
6 he wanted to fight.

7 He had I.V. ports in, I believe,
8 both of his hands, I am pretty sure his left
9 hand. He threw his I.V. port out and blood
10 started going everywhere.

11 Q Everywhere?

12 A Yes.

13 Q Describe that.

14 A Blood began to run out of the wound
15 where the I.V. port was in and started dripping
16 down on the floor. It was dripping off his
17 hand.

18 Q In a constant stream or dripping?

19 A Pretty good drip. It wasn't a flow
20 stream, but it was dripping off his hand pretty
21 good. So I'm assuming it was dripping off his
22 hand for it to be dripping the way it was.

23 Q What happened next after he pulled
24 the I.V. ports out?

25 A He asked Officer Pickens if he

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1 wanted to fight. Made the statement he would
2 fight. And clinched his fist and was shaking
3 his fist and blood was coming off his hand.

4 Q Where did it go?

5 A Coming off his hand into the air
6 and going to the ground.

7 Q Did you see any blood hit the
8 walls?

9 A I don't remember. I wasn't
10 focusing on the walls at that point.

11 Q Did you see any blood hit any of
12 the officers?

13 A No.

14 Q How close was he to Officer
15 Pickens?

16 A At one point he was probably one
17 foot to a foot and a half up close to his face.

18 Q Was Officer Pickens the closest
19 person to him?

20 A Yes, sir, he was.

21 Q At this point he has pulled out the
22 I.V. ports and he is making these statements.
23 You said he was clenching his fist saying, "Do
24 you want to fight"?

25 A Yes.

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1 Q He is in the hallway, right?

2 A Yes.

3 Q And he has stopped walking?

4 A Yes.

5 Q Describe for me where everybody is
6 at in relation to him.

7 A I was on the opposite side of the
8 hallway from Mr. Leija, standing probably five
9 foot from Officer Pickens, standing close to the
10 wall. And Deputy Beebe was probably three to
11 five feet behind me at about the center of the
12 hallway.

13 Q Officer Pickens was where?

14 A Close to the center of the hallway,
15 probably three to five feet from me.

16 Q Did Mr. Mr. Leija have his back
17 facing the hallway wall?

18 A Somewhat, yes.

19 (Exhibit No. 2 marked for
20 identification.)

21 Q (BY MR. BEAVER) I will hand you
22 Exhibit 2. This is part of the OSBI report. I
23 want you to go through what happened.

24 We left off, he had his fists up
25 and there was blood dripping off his hands and

1 he was offering to fight.

2 And I asked you about everyone's
3 position. Tell me what happened next. The
4 three of you are standing around him?

5 A Not standing around him. I am up
6 against the wall in the hallway. At the point
7 the blood started flowing from his hand and he
8 gets up in Officer Pickens' face. At that point
9 I also began to give him commands.

10 Q What did you say to him?

11 A That he needed to step back and
12 drop to his knees and calm down.

13 Q What tone of voice were you using?

14 A Command voice, trying to be
15 assertive and get his attention.

16 Q Authoritative?

17 A Yes, sir.

18 Q How many times did you say that?

19 A Several times.

20 Q Did you say it in variations of
21 that or just the same thing over and over?

22 A It may have varied.

23 Q What was his response?

24 A Nonresponsive. He did not comply.

25 Q Did he look at you?

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1 A I don't recall if he did or not.

2 Q Who was he focused on, if anyone?

3 A It appeared to be Officer Pickens.

4 Q What happened next?

5 A At the point he got close to
6 Officer Pickens' his face, within a foot or so.
7 Officer Pickens stepped back and we started
8 giving commands.

9 Q What kind of commands?

10 A Told him he needed to step back and
11 calm down and drop to his knees.

12 Q Why did you tell him to drop to
13 his knees?

14 A So we could get him out of an
15 aggressive stance and try to gain control.

16 Q What happened next?

17 A Started giving him orders.

18 Q Then what happened?

19 A He didn't comply. I believe Deputy
20 Beebe was giving him orders.

21 Q What kind of orders?

22 A I'm not sure what Deputy Beebe was
23 saying. I was telling him he needed to drop to
24 his knees, continued that, and told him he would
25 be tased if he did not comply.

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1 Q Did you have a Taser?

2 A No, sir, I did not.

3 Q Is that the word you used, "tased"?

4 A I'm not sure. It probably was.

5 Q When you have a Stinger, do you
6 say, "I am going to Stinger you; you're going to
7 get tased" or "You're going to get stung"? What
8 is the right terminology?

9 A When I have used one or been
10 involved with someone else, I say "tased."

11 Q Everyone knows the term "tased"?

12 A Yes.

13 Q What happened next?

14 A I told him repeatedly that he
15 needed to drop to his knees and calm down or he
16 would be tased.

17 Q Who had a Taser?

18 A Deputy Beebe.

19 Q Was he the only one?

20 A Yes.

21 Q What happened next?

22 A This went on, it seemed like
23 forever, I'm not sure on the time frame. Gave
24 him several commands and he did not comply. He
25 continued to be aggressive, waving his hands

1 around with the blood going everywhere.

2 After several commands that he was
3 going to be tased if he did not comply, Deputy
4 Beebe took over and started giving commands and
5 at some point he deployed the Stinger.

6 Q Where at?

7 A Towards Mr. Leija. I saw one hit
8 him in the upper body area. I saw one dart, but
9 I did not see the second dart.

10 Q In the middle of the chest area?

11 A Somewhere in the upper torso area,
12 chest area, yes.

13 Q What does your training say about
14 the best location to apply the Taser or Stinger?

15 A Truthfully, it's been so long since
16 I have used one, and it's been so long since I
17 have looked at the manual, I couldn't tell you
18 honestly.

19 Q Do you remember if there is any
20 training about places to try to avoid any
21 application of the Stinger?

22 A I do remember to avoid the head and
23 neck area.

24 Q Anywhere else?

25 A That's all I recall. I would have

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1 to look at the manual.

2 Q Do you recall any training about
3 trying to avoid the center of the chest?

4 A Not that I recall.

5 Q Or trying to avoid the areas where
6 vital organs are located, such as the groin area
7 or the heart?

8 A I don't recall.

9 Q What happened next? We left off
10 with Deputy Beebe using the Taser. You saw one
11 probe go towards his chest, and the other one
12 you didn't know what happened or didn't see it?

13 A Correct.

14 Q What happened next?

15 A I know it had no effect on him.

16 Q Why is that?

17 A Normally if someone is tased they
18 will drop to the ground.

19 Q Why didn't it have an effect on
20 him?

21 A I have no idea.

22 Q At the time, what did you believe
23 was the reason?

24 A I don't know if I had that thought,
25 sir.

1 Q Looking back, was the Taser
2 malfunctioning?

3 A I'm not a technician for those, so
4 I can't answer. I know it was deployed and it
5 didn't work.

6 Q That's my question. Did he receive
7 the voltage in the first shot?

8 A I'm not sure. He did not act like
9 he did.

10 Q I have never seen a Taser. I've
11 never shot one. It's my understanding that both
12 probes have to connect in order for there to be
13 electric circulation; am I accurate?

14 A I believe so, yes.

15 Q If only one probe made contact and
16 the other one didn't, he would not have felt the
17 voltage?

18 A Probably not.

19 Q Did that happen?

20 A At that point I did not know that,
21 but I believe it did.

22 Q So he was shot with the Taser, and
23 it didn't seem to affect him.

24 What happened next?

25 A I saw an opportunity to try to grab

1 him to restrain him.

2 Q What did you do?

3 A I went up and grabbed his right arm
4 around the wrist and elbow area.

5 Q You have seen that portion of the
6 video, haven't you?

7 A Yes.

8 Q Whenever we see you, are you the
9 officer with the bald head in the video?

10 A Yes.

11 Q When we see you grab his right arm,
12 was that the only -- had you grabbed his right
13 arm off camera or was that the first time you
14 grabbed his arm?

15 A That was the first time I grabbed
16 his arm. I'm not sure how much of that is on
17 video.

18 Q What happened next?

19 A Once I grabbed him and tried to
20 restrain him, Officer Pickens grabbed the other
21 arm to restrain him.

22 Q The left arm?

23 A Yes. We attempted to do an arm bar
24 takedown.

25 Q And what happened?

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1 A We could not move his arms.

2 Q What happened next?

3 A We were able to turn him. He was
4 struggling with us, and we were able to turn him
5 to get him against the wall by the cafeteria.

6 Q Face first to the wall?

7 A Yes.

8 Q What happened next?

9 A We were attempting to get his hands
10 behind him where we could restrain him, and we
11 could not move his arms.

12 Deputy Beebe came in and
13 administered a dry sting.

14 Q What is that?

15 A That's without the cartridge. It's
16 just contact with the Stinger itself.

17 Q Directly on the skin?

18 A Yes. Well, on the body through the
19 clothing.

20 Q Where did he do that?

21 A I'm not sure. Somewhere in the
22 back area, but I'm not sure where because I was
23 not looking.

24 Q You and Officer Pickens had ahold
25 of Mr. Leija against the wall when Deputy Beebe

1 applied the Taser the second time?

2 A Yes.

3 Q To the back?

4 A Yes.

5 Q What happened next?

6 A Still appeared to have no effect on
7 him.

8 We were unable to get him to loosen
9 up to where we could move his arms. He was
10 still pulling against us pretty strongly.

11 Q And then what happened?

12 A Still would not comply. And we
13 were telling him to calm down and put his hands
14 behind his back. And he told us no.

15 At some point during that struggle,
16 I took my knee or my foot and pushed it back
17 into the bend of his right leg where his leg
18 would bend some.

19 At that point we were able to turn
20 him. And we were going to place him on the
21 floor, and he started moving with us. So we
22 went approximately 10 or 15 feet from where we
23 were standing at the wall to the floor.

24 Q What position was he in at that
25 point when he went to the floor?

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1 A Face down.

2 Q Where were you?

3 A On his right side still.

4 Q What were you doing?

5 A Trying to get his right arm more
6 where I could place it behind his back and
7 handcuff him.

8 Q Where was Officer Pickens?

9 A On his left side.

10 Q What was he doing?

11 A Also trying to get ahold of an arm
12 to get it behind his back.

13 Q Where was Beebe?

14 A Around his leg area.

15 Q What was keeping Mr. Leija from
16 getting back up at that point?

17 MR. ANDERSON: Object to the form.

18 THE WITNESS: I guess he was unable
19 to use his arms to push himself up because we
20 were fighting him with his arms.

21 Q (BY MR. BEAVER) He was face down,
22 prone position?

23 A He was in prone position. I don't
24 remember which way he had his head turned.

25 Q His chest was making contact with

1 the ground?

2 A Yes.

3 Q You said you had ahold of his arm
4 and you were trying to get his right arm behind
5 him?

6 A Yes.

7 Q Why?

8 A So we could restrain him and put a
9 handcuff on him.

10 Q Officer Pickens was doing the same
11 thing with the left arm?

12 A He was attempting to, yes.

13 Q Did you ever get handcuffs on him?

14 A I was able to get one handcuff on
15 his right wrist.

16 Q You were able to do that?

17 A Deputy Beebe placed the handcuff on
18 him. I was able to get his arm up to where
19 Beebe could place the handcuff on him.

20 Q What happened next?

21 A We were able to get that arm in
22 control and Deputy Beebe got a cuff on it. And
23 he pulled his left arm and got it up underneath
24 his body, and Pickens got ahold of that arm.

25 Q Where under his body?

1 A He tucked in under his chest,
2 stomach area.

3 Q Then what happened?

4 A I believe Pickens was able to get
5 ahold of the arm. All this was happening
6 simultaneously as we were getting the handcuff
7 on, because once Beebe got a cuff on, I heard
8 Leija make a grunting noise or some sort of
9 noise.

10 And I heard one of the nurses
11 comment. And I looked and he was vomiting clear
12 liquid.

13 Q Was he still struggling against
14 you?

15 A Not once he vomited. He was up to
16 that point.

17 Q Where his eyes open or could you
18 see his face?

19 A I didn't see his face.

20 Q Then what happened?

21 A Once he did that, one of the nurses
22 thought he was coding, and we rolled him over so
23 they could look at him.

24 Q Let's go back to the point where
25 you heard somebody, you thought it was a female

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1 voice, say -- I don't want to misquote you --
2 something to the effect of, "If he leaves here
3 he is going to die" or something like that.

4 A My recollection is it was a female
5 voice, and they said, "If he leaves here, he
6 will die," something to that effect.

7 Q Did you hear what the condition
8 was?

9 A No.

10 Q Did you hear anyone ask what the
11 condition was?

12 A No.

13 Q Did you know he had double
14 pneumonia at that time?

15 A I don't know if I knew that at that
16 time.

17 Q Did you know at that time that he
18 had a severe lung condition?

19 A I don't believe so.

20 Q Did you know at that time that he
21 was having difficulty breathing?

22 A I don't believe so.

23 Q Did you ever learn any of those
24 things or facts up until -- at any time that
25 night?

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1 A At that point I did not.

2 Q At any time during the
3 confrontation, did you make that determination?

4 A That he needed --

5 Q That he was a danger to himself.

6 A I don't believe I did.

7 Q Let's go back to the question.

8 When he put his fist up and said: "Do you want
9 to fight," why didn't you, Officer Pickens, and
10 Beebe turn around and leave?

11 A We were trying to calm the subject
12 down and find out what was going on.

13 Q Do you believe that you had
14 authority to tell him to get on his knees, give
15 him any orders at all?

16 A At the time I told him that, yes.

17 Q You're a police officer and you
18 have a badge and a gun today. If you told me
19 right now, "Get on your knees, Mr. Beaver," do
20 you believe you would have authority to do that?

21 MR. ANDERSON: Objection; form.

22 THE WITNESS: No.

23 Q (BY MR. BEAVER) Why would you with
24 Mr. Leija, but you wouldn't right now?

25 A At that point I told Mr. Leija to

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1 do that, he was attempting to sling blood on
2 another officer, which is a felony.

3 Q I asked you earlier if he
4 threatened anybody.

5 A And I said yes.

6 Q I asked you how he threatened
7 anybody, and you said he was asking Officer
8 Pickens if he wanted to fight and he had his
9 fist up, correct?

10 A Yes.

11 Q When did you make the determination
12 that he had committed a felony and was trying to
13 sling blood on somebody?

14 A After he had ripped his I.V. port
15 out and had raised his fist again and was
16 shaking blood and stepped towards Officer
17 Pickens.

18 Q You believe he was intending to
19 throw blood on anybody?

20 A He was attempting to make contact
21 with Officer Pickens.

22 Q Did he make contact with Officer
23 Pickens?

24 A No. Officer Pickens stepped back.

25 Q Did he follow Officer Pickens?

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1 A Yes, he did.

2 Q Did Officer Pickens step back?

3 A He continued to step back.

4 Q Did he ever make contact with
5 Officer Pickens?

6 A No.

7 Q Why not?

8 A Because Officer Pickens stepped
9 back. Officer Pickens stepped back. And that's
10 the point we started to give him commands that
11 he needed to drop to his knees. At the time I
12 started giving him commands to do that.

13 Q At this point why not just walk
14 away?

15 A What point?

16 Q At the time where he is walking
17 towards Officer Pickens.

18 A Just like I told you, he was
19 attempting to commit a felony at that point.

20 Q Of slinging blood?

21 A Yes.

22 Q You think that's what he was
23 attempting to do?

24 A That's what he appeared to be doing
25 to me.

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1 Q You said he had his fist up?

2 A Yes.

3 Q And there was blood dripping from
4 his hand?

5 A Yes.

6 Q He said, "Do you want to fight" and
7 he had his fists up?

8 A Yes.

9 Q What made you think he was trying
10 to make contact with his blood on anybody? What
11 did he do?

12 A He was waving his fists around and
13 blood was flowing out of his hand. And he
14 advanced towards Officer Pickens.

15 Q Anything else?

16 A No. He advanced towards Officer
17 Pickens and had his hands up and was moving his
18 fists around and asking if he wanted to fight.

19 Q In this diagram that was drawn by
20 the OSBI -- I don't know who did it. Everyone
21 has received a copy -- Room 103 was his room; is
22 that right?

23 A I'm not sure.

24 Q Let's assume 103 was his room and
25 that's his room.

1 facing -- but he was facing -- he didn't have
2 his back up against the wall still. It was down
3 towards the hallway.

4 Q Okay. Were you planning on
5 arresting him?

6 A I was planning on talking him into
7 custody.

8 Q Out of the hospital?

9 A Probably not. At that point I was
10 focused on getting him restrained and calmed
11 down.

12 Q You said you thought he had
13 committed a felony, right?

14 A Yes.

15 Q What were you going to do about
16 that felony?

17 A I was going to get him into custody
18 at that point, and once we calmed him down and
19 then see if he needed to have charges filed or
20 have him evaluated by mental health.

21 Q If charges were going to be filed
22 on him, were you planning on arresting him and
23 talking him to jail?

24 A I hadn't thought that far ahead, to
25 tell you the truth at that point.

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1 Q From the time you grabbed ahold of
2 his right arm until the time that you let him
3 go, was he physically resisting you?

4 A Yes.

5 Q Pulling and pushing against you?

6 A Yes.

7 Q Exerting himself?

8 A I would assume so.

9 Q And he was against three officers
10 really at one point?

11 MR. ANDERSON: Object to the form.

12 THE WITNESS: No. It was Pickens
13 and I.

14 Q (BY MR. BEAVER) Beebe never
15 touched him?

16 A Once he was on the ground, yes, he
17 did.

18 Q You believe a patient in the
19 hospital has a right to refuse medical treatment
20 if they want to?

21 A Yes, I do.

22 Q Why did you not believe that
23 Mr. Leija had the right to do that?

24 A Looking back now, I don't think he
25 was in the right state of mind. Looking back

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1 now.

2 Q That night.

3 A I didn't make any determination of
4 that at any point.

5 Q So your actions in grabbing his arm
6 and taking him to the ground didn't have
7 anything to do with his mental health or what
8 you believed at that time to be his mental
9 health, it had to do with the felony that you
10 thought he committed; is that right?

11 MR. ANDERSON: Object to the form.

12 THE WITNESS: When I took his arm,
13 I was trying to take control of him because of
14 him slinging the blood, yes.

15 Q (BY MR. BEAVER) And nothing else?

16 A Not at that point. I was just
17 trying to gain control of him.

18 Q When was the first time he was
19 given an order or command by any of the three
20 officers there?

21 A I don't believe he was given a
22 command until we told him to drop to his knees
23 after he had removed the I.V. and there was
24 blood flowing.

25 Q Just so I am clear on the sequence